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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1163

VIRGO CORPORATION, *Petitioner*

v.

RALPH M. PAIEWONSKY, MORRIS F. DECASTRO, ALBERT PRENDERGAST, PERCY DEJONGH, RUBEN WHEATLEY, MAHLEN LINDQUIST, ADOLPH POTTER, JOSEPH ALEXANDER, PERCY GARDINE, and the GOVERNMENT OF THE VIRGIN ISLANDS.

MOTION OF ANTILLES INDUSTRIES, INC. FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF ANTILLES INDUSTRIES, INC. AS AMICUS CURIAE.

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PRESS OF BYRON S. ADAMS

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RALPH M. PAIEWONSKY, MORRIS F. DECASTRO, ALBERT PRENDERGAST, PERCY DEJONGH, RUBEN WHEATLEY, MAHLEN LINDQUIST, ADOLPH POTTER, JOSEPH ALEXANDER, PERCY GARDINE, and the GOVERNMENT OF THE VIRGIN ISLANDS.

ON PETITION OF VIRGO CORPORATION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Antilles Industries, Inc. respectfully moves this Court for leave to file the accompanying brief as *amicus curiae* in support of the petition herein.[1] The consent of counsel for petitioner has been obtained but

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[1] Petition of Virgo Corporation to review *Virgo Corporation* v. *Paiewonsky et al.* (3 Cir. 1967) 384 F. 2d 569.

counsel for respondent refused consent to the filing of said brief.

Applicant, Antilles Industries, Inc., has an interest in this case for the following reasons:

1. The Government of the Virgin Islands has asserted a tax liability against applicant under the provisions of the Watch Production Act of the Virgin Islands,[2] as amended.[3] The validity of that Act is in issue in this proceeding. The United States District Court for the Virgin Islands held the law and the tax which it imposes to be invalid.[4] The Court of Appeals for the Third Circuit reversed.[5] If the decision of the court below is not reversed, applicant will be liable to pay this tax.

2. Applicant heretofore has filed an application with the Virgin Islands Industrial Incentive Board for tax exemption and subsidy benefits under the Industrial Incentive Act[6] of the Virgin Islands. Following failure of the Industrial Incentive Board and of the Governor of the Virgin Islands to take action on this application, applicant filed suit in the United States District Court

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[2] Act of August 30, 1965, No. 1518, V.I. Sess. L. 1965, p. 470 *et seq.*; 33 V.I.C. §§ 511-518.

[3] Act of March 22, 1966, No. 1631, V.I. Sess. L. 1966, p. 98 *et seq.*; 33 V.I.C. §§ 511-518 as amended.

[4] *Virgo Corporation* v. *Paiewonsky et al.* (D.V.I. 1966) 251 F. Supp. 279.

[5] *Virgo Corporation* v. *Paiewonsky et al.* (3 Cir. 1967) 384 F. 2d 569.

[6] Act of November 3, 1961, No. 798, V.I. Sess. L. 1961, p. 252 *et seq.*; 33 V.I.C. § 4001 *et seq.*

for the Virgin Islands[7] requesting among other things that the court direct respondents to issue the tax benefits to it. The issues involved in this proceeding are dispositive of applicant's right to receive the tax benefits sought in the aforesaid litigation. Said litigation is being held in abeyance pending final determination of this proceeding.

Under the decision of the District Court, herein,[8] applicant would be entitled to said tax incentive benefits. Applicant would not be so entitled if the decision of the court below is permitted to stand.

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[7] *Antilles Industries, Inc.* v. *Paiewonsky et al.*, Civil Action No. 15/1966, U.S. District Court for the Virgin Islands.

[8] *Supra*, Note 4.

MOTION OF ANTILLES INDUSTRIES, INC. FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF ANTILLES INDUSTRIES, INC. AS AMICUS CURIAE.

The attached brief of Antilles Industries, Inc., as *amicus curiae* will, if permission to file is granted, present points and discussion not developed in the briefs of petitioner before the court below, and applicant has no assurance that these points will be advanced and discussed before this Court. If these points and argument thereunder are approved by this Court, the decision of the court below must be reversed.

Because of the effect of the decision below upon applicant and its potential effect upon commerce between the Territory of the Virgin Islands and the United States, Antilles Industries, Inc. respectfully requests permission to file a brief *amicus curiae.*

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Leave to File Brief as Amicus Curiae and the appended Brief Amicus Curiae was mailed, postage prepaid, to William Simon, Esquire, 1707 H Street, N. W., Washington, D. C., Counsel for petitioner, and to the Honorable Attorney General of the U.S: Virgin Islands, Charlotte Amalie, U.S. Virgin Islands.

JOHN D. CONNER
Counsel for Applicant

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BRIEF OF AMICUS CURIAE ON BEHALF OF ANTILLES INDUSTRIES, INC. IN SUPPORT OF THE PETITION OF VIRGO CORPORATION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

INTEREST OF AMICUS CURIAE

Antilles Industries, Inc. (hereinafter referred to as "Antilles") is a corporation organized and existing under the laws of the United States Virgin Islands (hereinafter sometimes referred to as "the Territory") and having its principal place of business at Orange Grove, Christiansted, St. Croix. Antilles, since 1963, has engaged in the assembly of imported watch parts and subassemblies into jeweled-lever wristwatch movements the entirety of which are exported to the United States. Antilles' operations are essentially identical to those of petitioner, and of the other members of the newly established watch industry in the Virgin Islands.[1]

Antilles acquired its watch assembly operations in the Virgin Islands in reliance upon two primary economic factors, both of which are at issue in this proceeding:

1. The right to ship the watches which it assembled in the Virgin Islands to the United States without the payment of duty in reliance upon the provisions of Headnote 3(a) of the Tariff Schedules of the United States,[2] and

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[1] The favorable tariff considerations which have encouraged the establishment of this industry are discussed in the opinion of the District Court herein, *Virgo Corporation* v. *Paiewonsky* (D.V.I 1966) 251 F. Supp. 279, 281-283, and in S. Rep. No. 1647, 89th Congress, 2d Session.

[2] 19 U.S.C.A. § 1202.

2. The right to receive tax incentive and subsidy benefits under the provisions of the Virgin Islands Industrial Incentive Act.[3]

Following enactment of the Watch Production Act of the Virgin Islands[4] Antilles applied for and was granted a quota for the shipment of watches to the United States. It also applied for and was denied an additional quota from the overall supplemental quota established for hardship cases and new companies. Because the $2.47 tax applicable to over-quota shipments to the United States made such shipments economically unfeasible and because the quota established was so limited, Antilles was forced substantially to curtail its shipment of watch movements to the United States. The demand for its watch movements from its established customers was substantially in excess of its quota.

Accordingly, after the District Court herein declared the Watch Production Act as originally enacted[5] and as amended[6] to be invalid, Antilles in reliance upon these decisions increased its production and shipment to the United States. In further reliance upon these decisions, Antilles did not pay the tax imposed by the

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[3] Act of November 3, 1961, No. 798, V.I. Sess. L. 1961, p. 252 *et seq.*; 33 V.I.C. § 4001 *et seq.*

[4] Act of August 30, 1965, No. 1518, V.I. Sess. L. 1965, p. 470 *et seq.* as amended by Act of March 22, 1966, No. 1631, V.I. Sess. L. 1966, p. 98 *et seq.*; 33 V.I.C. §§ 511-518, as amended.

[5] *Virgo Corporation* v. *Paiewonsky et al.*, (D.V.I. 1966) 251 F. Supp. 279, 286.

[6] *Virgo Corporation* v. *Paiewonsky et al.*, (D.V.I. 1966) 254 F. Supp. 405, 414.

Watch Production Act.[7] Following the reversal by the court below, the Government of the Virgin Islands through the Department of Finance has made a demand upon Antilles for the payment of taxes which it contends accrued under said Act prior to its repeal.[8] A copy of the letter containing this demand is attached hereto as Appendix A.

Shortly after it established watch assembly operations in the Virgin Islands, Antilles made application to the Virgin Islands Industrial Incentive Board for the tax incentive and subsidy benefits extended by the Virgin Islands Industrial Incentive Act[9] but it has been denied the benefits of that statute. Antilles brought a civil action[10] to compel respondents to grant to it the benefits to which it is entitled under this Act. Said litigation is being held in abeyance pending final determination of this proceeding.

Under the decisions of the District Court herein,[11] Antilles would have no liability for the tax which the Government of the Virgin Islands is now demanding and would be entitled to receive the tax incentive and subsidy benefits extended by the Virgin Islands In-

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[7] *Supra*, Note 4.

[8] The Watch Production Act was repealed effective January 1, 1967, after the Congress of the United States enacted legislation to impose quotas on watches imported into the United States from the Virgin Islands, Guam and American Samoa. [Act of January 27, 1967, No. 1835, Sess. L. 1967.]

[9] *Supra*, Note 3.

[10] *Antilles Industries, Inc.* v. *Paiewonsky et al.*, Civil Action No. 15/1966, U.S. District Court for the Virgin Islands.

[11] Supra, Notes 5 and 6.

dustrial Incentive Act.[12] Under the decision of the court below, Antilles would be liable for the payment of the tax and would continue to be denied the subsidy benefits.

PUBLIC INTEREST

The questions involved in this proceeding are of substantial significance to each of the members of the newly developed Virgin Islands watch industry. In addition, the questions are of substantial public interest.

Directly at issue is the power of the Government of the Virgin Islands to tax or otherwise to regulate the shipment of watches or other commodities into the channels of the interstate commerce of the United States. Involved also is the consistency of the statutes of the Virgin Islands legislature with the enactments of the Congress of the United States.

ARGUMENT

I.

The Court Below Erred in Holding That the Portion of Section 36 of the Organic Act of 1936 for the Virgin Islands Which Provides That No New Export Duties Shall Be Levied in the Virgin Islands Except by Congress Was Repealed by Implication by the Revised Organic Act of 1954.

The District Court herein held that the proviso clause of Section 36 of the Organic Act of the Virgin Islands[13] of the United States providing "that no new export duty shall be levied in the Virgin Islands except by Congress" was not repealed by the Revised

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[12] *Supra*, Note 3.

[13] Act of June 22, 1936, ch. 699, 49 Stat. 1816, 48 U.S.C. § 1406i.

Organic Act of the Virgin Islands[14] and that therefore the Legislature of the Virgin Islands has no power to levy new export duties.[15]

On appeal the court below held that this proviso clause of Section 36 of the Organic Act of the Virgin Islands was repealed *by implication* by the revised Organic Act of 1954.

The court below recognized that the Organic Act of the Virgin Islands of 1936 was not specifically repealed. It appears to have based its conclusion that the revised Organic Act of 1954 impliedly repealed the Organic Act of 1936 upon the following legislative history:

1. The Senate Bill, S.3378, contained a section which read:[16]

> Section 34. Except to the extent necessary to implement the provisions of section 35, the Act of June 22, 1936 (49 Stat. 1807), and any other provisions of law inconsistent with this Act are hereby repealed.

The House, in passing S.3378 substituted the following language:[17]

> Section 34. Except to the extent necessary to implement the provisions of section 31 hereof and

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[14] Act of July 22, 1954, Ch. 588, 68 Stat. 497, 48 U.S.C. § 1541 *et seq.*

[15] *Virgo Corporation* v. *Paiewonsky, et al.* (D.V.I. 1966) 251 F. Supp. 279, 283.

[16] *Virgo Corporation* v. *Paiewonsky et al.* (3 Cir. 1967) 384 F. 2d 569, 577 citing 100 Cong. Rec. 6654.

[17] *Id.* at 577-578, citing 100 Cong. Rec. 8673.

> except with reference to the authority of the Secretary of the Treasury under section 36 of the Act of June 22, 1936 (49 Stat. 1807), said act and other provisions of law inconsistent with this act are hereby repealed.

However, the court, after recognizing that the law as enacted contained neither of these provisions, observed that this section may have been omitted by inadvertence.

2. The Revised Organic Act of 1954 described the legislative authority of the Virgin Islands as follows:

> Section 8(a). The legislative authority and power of the Virgin Islands shall extend to all subjects of local application not inconsistent with this Act or the laws of the United States made applicable to the Virgin Islands.[18]

The court pointed out that in 1958 this legislative authority was broadened by amending Section 8(a) to read as follows:[19]

> The legislative authority and power of the Virgin Islands shall extend to all rightful subjects of legislation not inconsistent with this Act nor the laws of the United States made applicable to the Virgin Islands . . .

The court below thus concluded:[20]

> It thus seems clear that the revised Organic Act of 1954 operated to repeal the Organic Act of 1936.

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[18] *Id.* at p. 578, citing 68 Stat. 500.

[19] *Id.* at p. 578.

[20] *Ibid.*

This conclusion overlooks the specific provisions of Section 8(c) of the Revised Organic Act[21] that:

> (c) The laws of the United States applicable to the Virgin Islands on July 22, 1954, including laws made applicable to the Virgin Islands by or pursuant to the provisions of the Act of June 22, 1936, [49 Stat. 1807] and all local laws and ordinances in force in the Virgin Islands, or any part thereof, on July 22, 1954, shall, to the extent that they are not inconsistent with this chapter, . . . continue in force and effect until otherwise provided by the Congress: . . .

Accordingly, the Revised Organic Act of 1954 specifically provided that the provisions of the Organic Act of 1936 would continue in force and effect *except to the extent that the provisions of the 1936 Organic Act are inconsistent with the provisions of the 1954 Act.*

The court below did not suggest that the proviso of Section 36 of the Organic Act of 1936 *prohibiting the Legislature of the Virgin Islands from imposing an export duty* was inconsistent with any portion of the 1954 Revised Organic Act. Unless some such inconsistency can be demonstrated, (and none is known to Antilles) the 1954 Act must be read as continuing this provision in Section 36 of the 1936 Organic Act, thereby continuing the prohibition against the imposition by the Legislature of the Virgin Islands of any export duty.

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[21] *Supra*, note 14.

II.

The Court Below Erred in Holding That the Tax Imposed by the Virgin Islands Watch Production Act Did Not Constitute an Export Duty.

The trial court in this proceeding, after an exhaustive review of the history and purpose of the Act said:

> There can be no other interpretation of the Watch Production Quota Act than it being an export duty upon watches entering the "customs area of the United States."[22]

The Court of Appeals looking only to the form of the tax held it to be:

> Essentially an excise tax levied on the production of watches in the Virgin Islands, a process local in nature and complete in itself.[23]

This conclusion overlooks the obvious fact that of the total tax of $2.50 per watch, only 3 cents per watch was payable unless the watches were shipped to the United States in excess of quota.

After the District Court declared the Watch Production Act to be invalid,[24] the Congress of the United States enacted legislation imposing quotas on the importation of watches from the Virgin Islands.[25] The Report of the Senate Finance Committee upon this legislation[26] recognized that the sole purpose of the

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[22] *Supra*, note 5 at 283; see also *supra*, note 6 at 413-414.

[23] *Supra*, note 16 at p. 10.

[24] *Supra*, note 5.

[25] P.L. 89-805, 80 Stat. 1521.

[26] S. Rept. 1679, 89th Cong., 2d Sess.

Virgin Islands Watch Production Act had been to limit the export of watches from the Virgin Islands to the United States. In that Report it was stated:

> In an effort to control the watch assembly operations and to forestall Congressional legislation which would have prohibited duty free importation of watches assembled in the possessions, the Virgin Islands Legislature, on August 30, 1965, enacted legislation (Bill No. 2638) designed to limit watch assembly there for export to the United States to a quantity roughly equivalent to one-ninth of total apparent United States watch consumption for the preceding year. This local quota statute was attacked in the courts, and on March 14, 1966 was declared invalid by the United States District Court of the Virgin Islands (Virgo Corporation v. Paiewonsky, Civ.No. 165-1965.)[27]

The conclusion of the court below that the tax is not an export tax flies in the face of this Court's long-standing practice of determining the constitutionality of a taxing scheme by concerning itself "... with the practical operation of the tax, that is, substance rather than form." *American Oil Co.* v. *Neill et al.*, 380 U.S. 451, 455 (1965); see also: *Wisconsin* v. *J. C. Penney Co.*, 311 U.S. 435, 443-444 (1910); *Lawrence* v. *State Tax Comm'n.*, 286 U.S. 276, 280 (1932). The Court's concern is directed toward the ultimate effect of the law as applied and enforced. *Connecticut General Life Ins. Co.* v. *Johnson*, 303 U.S. 77, 80 (1938); *Stewart Dry Goods Company* v. *Lewis*, 294 U.S. 550, 580 (1935); *Galveston, Harrisburg and San Antonio Railway Co. et al.* v. *State of Texas*, 210 U.S. 217 (1808); *Postal Telegraph Cable Co.* v. *Adams etc.*, 155 U.S. 688 (1895).

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[27] *Id.* at p. 5.

The Watch Production Act imposed a tax upon the right to export—a tax upon goods because of the fact that they are being exported or intended to be exported. Such taxes are *export taxes. Coe* v. *Town of Errol,* 116 U.S. 517, 526 (1886); *Turpin* v. *Burgess,* 117 U.S. 504, 507 (1886).[28]

III.

The Court Below Erred in Holding That the Governor of the Virgin Islands, in Administering the Industrial Incentive Act, May Apply to Each Individual Applicant for Tax Exemption and Subsidy Benefits the Test of the Need for "The Stimulus of Such Government Assistance."

The Industrial Incentive Act of the Virgin Islands[29] (hereinafter the "Incentive Act") empowers the respondent Governor to grant tax benefits[30] upon a finding that the industrial or business activity engaged in will promote the public interest by economic development of the Virgin Islands, that the establishment or

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[28] Regulations adopted under the Watch Production Act provided for verification of the quantity of watches subject to tax by reference to the customs records revealing shipments to the United States. Title 33 Virgin Islands Rules and Regulations § 517-4.

[29] *Supra,* note 6.

[30] The program authorizes, for a period of ten years, an exemption from all real estate taxes; all excise taxes on construction tools and materials; and all license fees except those applicable to liquor and automobiles. In addition, the following subsidies are provided: (1) A nontaxable subsidy equal to 90 percent of the import duties on raw materials brought into the Virgin Islands; (2) A non-taxable subsidy equal to 75 percent of the income tax liability paid to the Government of the Virgin Islands during the taxable year; and (3) a nontaxable subsidy of 75 percent of the income tax paid to the Government of the Virgin Islands on dividends received by stockholders of a corporation granted tax exemption or subsidy, providing the stockholder was a resident of the Virgin Islands during the taxable year.

expansion of the activity in the Virgin Islands requires incentive in the form of granting the tax exemption and subsidy benefits, and that the applicant is otherwise qualified under the provisions of the program.

Pursuant to the Incentive Act, respondents awarded tax exemption and subsidy benefits to four companies which had started watch assembly operations in the Virgin Islands.[31] The granting of these benefits necessarily constituted a finding by the respondents that the industrial activity engaged in, namely, the assembling of watch movements, would meet the requirements of the Incentive Act.[32]

Both petitioner and Antilles conduct watch assembly operations which are substantially identical to the operations of the four companies granted tax incentive benefits. Both petitioner and Antilles applied in 1963 for tax exemption and subsidy benefits. On December 9, 1964, each company received a letter [33] from respondents advising that the Governor had directed that all pending applications for tax exemption be "frozen" for an indefinite time because "a controversy exists over our watch industry in regards to its effect on the mainland."

The District Court held that respondents had no authority to refuse tax exemption to an applicant which demonstrates its compliance with all statutory

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[31] Standard Time Corporation, Christiansted, St. Croix; Unitime Corporation, Christiansted, St. Croix; Quality Products Co., Inc., St. Thomas; and Admiral Time, Inc., Christiansted, St. Croix.

[32] So held by the District Court *Virgo Corporation* v. *Paiewonsky et al.* (D.V.I. 1966) 251 F. Supp. 279, 285.

[33] *Id.* at 284.

conditions merely "because the Governor believes that other considerations should enter into . . . [the] deliberations and recommendations" respecting the granting of tax incentive benefits [34] and ordered the respondent members of the Industrial Incentive Board to consider petitioner's application and recommend disposition to the Governor. The Board considered and recommended partial tax exemption; the Governor disapproved the recommendation and the District Court ordered the Governor to grant tax exemption.[35]

The court below reversed, holding that the Governor acted within his discretionary power in refusing tax incentive benefits to petitioner because petitioner ". . . as evidenced by its substantial profit return, does not require the stimulus of governmental assistance as provided for by the law." [36]

A. The Statutory Test Is Properly Applicable Only to the "industrial or business activity" Concerned and Not to Each Individual Applicant.

In substance the court below held that the Governor can make a separate finding as to whether each individual member of the watch industry of the Virgin Islands requires the incentive of tax exemption and subsidy benefits.

All members of the Virgin Islands watch industry operate under substantially similar conditions. Each engages in substantially the same type of operation of

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[34] Citing: *Vitex Manufacturing Co.* v. *Government of the Virgin Islands* (3 Cir. 1965) 351 F. 2d 313.

[35] *Supra*, note 6.

[36] *Virgo Corporation* v. *Paiewonsky, et al.* (3 Cir. 1967) 384 F. 2d 569, 584.

importing parts from abroad, assembling the parts in the Virgin Islands and exporting a completed movement to the United States. The amount of labor and skill required in the assembly operations is substantially the same for each member of the industry. The tariff provisions under which the entire industry operates are the controlling economic factors.

It is these industry-wide conditions which dictate a need or lack of need for the stimulus of tax incentive and subsidy benefits—not any economic conditions which are peculiar to any individual member of the industry. The standards of the Incentive Act were intended to be applied on an industry-wide basis.

When the Governor granted tax incentive and subsidy benefits to Standard Time Corporation, Unitime Corporation, Quality Products Company and Admiral Time, Inc., he of necessity made a finding that the Virgin Islands watch industry, including these companies, required this relief.

Insofar as Antilles is aware no record exists either in this proceeding or elsewhere which shows the factors which the Governor considered in granting tax incentive and subsidy benefits to these four members of the industry. However, whatever those factors were, they would have been equally applicable to Virgo Corporation and Antilles.

This argument does not mean that, once the Governor makes a finding that a company or an industry requires tax incentive and subsidy benefits he is thereafter precluded from changing this finding and determining that the industry no longer requires such subsidy benefits. It means only that, until the conditions upon which the original finding was based, are

changed, the same factors must be applied to each member of the industry.

Both Virgo Corporation and Antilles applied for tax exemption and subsidy benefits in 1963. No action was taken until December 9, 1964 at which time the companies were advised only that the Governor had frozen for an indefinite time the pending applications because of a controversy over the watch industry. It was not until 1967, approximately four years after the applications were filed, that the Governor found that Virgo Corporation did not require tax incentive and subsidy benefits. This finding presumably was based not upon a profit picture that was peculiar to Virgo Corporation, but one which was common to each member of the industry.

No such finding has been made by the Governor with respect to Antilles but it is anticipated that, if Antilles now presses its application, the Governor would make such a finding with respect to it.

B. If the Statutory Test Is Construed To Be Applicable to Each Individual Applicant, the Industrial Incentive Act Constitutes Special Legislation in Violation of Title 48, Section 1471.

If the Incentive Act is construed to authorize the Governor to grant tax incentive and subsidy benefits to four members of the watch industry and to deny such benefits to two other members of the same industry which are operating under substantially similar competitive conditions, the Act must be considered to be special legislation in violation of the Act of July 30, 1886.[37]

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[37] Act of July 30, 1886, 24 Stat. 170, U.S.C., Title 48, § 1471.

This law in pertinent part provides:

> The legislatures of the Territories of the United States now or hereafter to be organized, shall not pass local or special laws in any of the following enumerated cases, that is to say . . .
>
> Granting to any corporation, association, or individual any special or excessive privilege, immunity, or franchise whatsoever.

The prohibition of this section against the enactment of special laws has recently been held applicable to the Virgin Islands in *Smith* v. *Government of the Virgin Islands* (3 Cir. 1967) 375 F. 2d 714.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the petition for certiorari of Virgo Corporation be granted.

Respectfully submitted,

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Stamford, Connecticut

APPENDIX

GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
CHARLOTTE AMALIE, ST. THOMAS
DEARTMENT OF FINANCE
TAX DIVISION

January 19, 1968

Antilles Industries, Inc.
Orange Grove
Christiansted, St. Croix
U. S. Virgin Islands 00820

Gentlemen:

The United States Court of Appeals for the Third Circuit in Virgo Corporation, Docket No. 16116, and Master Time Company, Ltd., Docket No. 16133, vs. the Government of the Virgin Islands on September 29, 1967 held that the Watch Production Act of 1965, both as originally enacted and as amended in 1966 was valid and did not violate the commerce clause of the Constitution or the due process clause of the Revised Organic Act.

The Watch Production Act and its Amendment (Title 3, Sections 511-518 of the Virgin Islands Code) imposes a tax at the rate of 3 cents per watch, clock or unit of timing apparatus upon the amount of production for each category of product set forth in determinations and allocations made by the Governor of the Virgin Islands, and a rate of tax on the excess of $2.50 per watch, clock or unit of timing apparatus.

The Watch Production Act and its Amendment were repealed by Act No. 1835, Seventh Legislature of the Virgin Islands, effective January 1, 1967. Section 2 of Act No. 1835 provides as follows:

"Nothing herein shall be construed to affect the liability of manufacturers heretofore covered by such sections 511 through 518 of Title 33 for taxes under such sections upon watches, clocks and timing apparatus sold, or removed for sale, consumption or use as of any date up to and including December 31, 1966. All provisions of said sections, or any orders, rules or regulations issued thereunder, relating to the submismission of proof in connection with the establishment of the rate or rates of tax applicable, or to the submission of forms, reports or any other material relating to the tax liability of such manufacturers under said sections, up to and including December 31, 1966, are continuing in force and effect until otherwise provided by law".

A copy of the Regulations adopted pursuant to Section 517, Title 33 of the Virgin Islands Code is attached to this letter.

All watch production companies that have resisted payment of the production tax on watches pending the outcome of the court action against the Government of the Virgin Islands should take immediate action to file delinquent tax returns with remittance to cover taxes due up to and including December 31, 1966, with the Tax Division, Department of Finance. Likewise, all watch production companies are requested to file the inventory reports required under Section 517.7 of the Regulations immediately.

The delinquent production tax returns and inventory reports should be filed no later than thirty (30) days from the date of this letter.

Yours very truly,

VIGGO A. HENDRICKS
Viggo A. Hendricks
Chief, Processing & Accounts Branch

Enclosure